

EPA General Conformity Comments – NPL Preliminary Draft EIS

Thank you for the opportunity to provide input on the preliminary Chapters 2 and 3 of the Draft Environmental Impact Statement (EIS) for the Normally Pressurized Lance (NPL) Natural Gas Development Project. In addition to the comments we sent on March 8, 2013 for the preliminary Draft EIS, we offer the following comments regarding general conformity.

1. *General Conformity Exemptions*

The preliminary Draft EIS (Sections 2.43 and 3.2.2.2) states that project emission sources requiring a permit under the Clean Air Act (e.g. New Source Review (NSR) or Prevention of Significant Deterioration (PSD) programs) may be exempted from the general conformity determination. The preliminary Draft EIS specifically cites drill rigs as an example of a permitted source that would be eligible for this exemption. EPA wishes to clarify that pursuant to federal regulations, this exemption only applies to stationary emission sources that are permitted by either EPA or under a federally- approved state permitting program. For reference, see 40 CFR 93.153(d)(1)). As explained below, it appears that BLM may not be able to utilize the general conformity determination exemption provided for in Wyoming Air Quality Standards Regulation (WAQSR) Chapter 8, Section 3, Section 3(c)(iv)(A) for drill rigs that use nonroad engines.

EPA evaluated whether drill rig engines would qualify as a stationary source for the permit exemption. For this assessment, we first needed to establish how drill rig engines were defined by the State as being either *stationary engines* or *non-road engines*. EPA, however, was unable to find such definitions in either Wyoming's WAQSR Chapter 6 or WAQSR Chapter 8. Lacking such State definitions, we then relied on EPA's federal definitions. Engines which are considered as stationary sources are defined in 40 CFR 60.4219. With respect to the engines associated with drill rigs, they generally do not meet the above definition as they are defined as non-road engines in 40 CFR 1068.30. The exception to EPA's non-road engine definition is that non-road engines that remain at a single location for more than one year are not considered non-road engines (see 40 CFR 1068.30(2)). We have attached our June 2, 2009 letter which discusses EPA's interpretation of these definitions and how they apply to drill rig engines¹.

The State's general conformity requirements (see WASQR Chapter 8, Section 3) contain other potential exemptions and methodologies to address the general conformity requirements that BLM may wish to evaluate and consider for emissions from drill rigs engines. Please let us know if you would like to discuss them further.

Additional Notes:

- EPA notes above that the Wyoming's general conformity regulations in Chapter 8, Section 3, do not contain a definition of a stationary source. However, for permitting purposes, stationary sources are defined as buildings, structures, facilities or installations in Wyoming's WAQSR Chapter 6 permitting requirements and by EPA in 40 CFR 51.165 for NSR and 40

¹ See attached letter from EPA to Wild Earth Guardians, June 2, 2009.

CFR 52.21 for PSD.

- EPA notes the current applicable general conformity requirements for Wyoming's Upper Green River Basin (UGRB) ozone nonattainment area are contained in the federally-approved version of Wyoming Air Quality Standards Regulation (WAQSR) Chapter 8, Section 3 (see 69 FR 44965, July 28, 2004). For reference, EPA's general conformity regulation allows that the State's federally-approved general conformity provisions are used in-lieu of the federal requirements (Ref. 40 CFR 93.151).
- EPA notes that WAQSR Chapter 8, Section 3 contains the following similar exemption for stationary sources as specified in 40 CFR 93.153(d)(1):

“Section 3(c)(iv)(A): Notwithstanding the other requirements of this section, a conformity determination is not required for the following Federal actions (or portion thereof):

(A) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (§173 of the CAA) or the prevention of significant deterioration (PSD) program (title I, part C of the CAA).”

On December 21, 2012, Wyoming submitted a State Implementation Plan (SIP) revision that contained numerous revisions and updates to its general conformity requirements in Chapter 8, Section 3. One update involves Chapter 8, Section 3(c)(iv)(A) which added *minor* stationary sources to its exemption to align it with the federal provisions in 40 CFR 93.153(d)(1): “The portion of an action that includes major **and minor** new or modified stationary sources ...” EPA is currently reviewing the entire SIP revision and plans to publish a proposed action in the near future.

2. General Conformity Review Period

EPA's reading of the preliminary Draft EIS Section 2.4.3.1 suggests that BLM plans to require the proponent to provide 2-year development plans over the life of the project, and that these plans would include offsets and mitigation to demonstrate conformity. The Preliminary Draft EIS also suggests that the BLM intends to delay its general conformity determination until after future State SIP amendments are approved and then conduct an annual review of general conformity during the development period of the project. We wish to point out that that general conformity determinations typically occur on a one time basis in conjunction with a federal decision, such as a Record of Decision (ROD). EPA encourages BLM to clarify the two year development plan and the annual general conformity review with the State, including what the implications might be for a potential future SIP revision.

3. Conformity Demonstration

Section 3.2.2.2 of the preliminary Draft EIS discusses a general process for completing a general conformity demonstration for areas that currently have an existing nonattainment area SIP. We suggest replacing this discussion with one specific to an area that does NOT have an existing nonattainment SIP such as the NPL project area. For example, one approach to consider could involve BLM securing a commitment from the Governor of Wyoming to include the emissions into a potential future SIP revision. Also, the preliminary Draft EIS states that modeling may be used to demonstrate general conformity. While federal regulations allow this approach for most directly emitted criteria pollutants (e.g. carbon monoxide), the regulations do not allow modeling to be used to complete a general conformity determination for ozone, pursuant to WAQSR Chapter 8, Section 3. EPA recommends you omit this statement from the preliminary Draft EIS

4. Minor Edits and Suggestions

- i. The preliminary Draft EIS Section 2.4.3 states, Wyoming Ambient Air Quality Standards and Regulations (WAAQS) –Text should read: Wyoming Air Quality Standards Regulations (WAQSR).
- ii. NPL preliminary Draft EIS Section 3.2.2.2 In addition to a reference to Section 176(c) of the CAA, we recommend this section include a citation to the State of Wyoming’s general conformity regulations in Chapter 8, Section 3.
- iii. We suggest revising the following statement in the preliminary Draft EIS Section 3.2.2 that states that the “General Conformity rule, as presented in section 176(c) of the CAA” to clarify that the general conformity statutory requirements are found in the that section of the CAA; however, the EPA general conformity regulation requirements are found in 40 CFR 93.150 to 93.165.
- iv. The preliminary Draft EIS Section 3.2.2 indicates that the development plans would include Encana’s Operator-Committed Practices (OCPs) that were not provided to us in this preliminary Draft EIS review. We suggest including in the Draft EIS the OCPs used to demonstrate general conformity.

Attachment: Letter from EPA to Wild Earth Guardians, June 2, 2009.